

ORDER

OD – 10 to 12

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/133/2012
COMMISSIONER OF INCOME TAX, KOLKATA-II, KOLKATA
VERSUS
BIRLA CORPORATION LTD.

WITH

ITA/233/2007
COMMISSIONER OF INCOME TAX, KOLKATA-I
VERSUS
M/S. BIRLA CORPORATION LTD.

WITH

ITA/158/2010
COMMISSIONER OF INCOME TAX, KOLKATA-II, KOLKATA
VERSUS
M/S. BIRLA CORPORATION LTD.

BEFORE:

The Hon'ble Justice SURYA PRAKASH KESARWANI

The Hon'ble Justice RAJARSHI BHARADWAJ

Date : 13th December 2023.

Appearance:

Mr. Vipul Kundalia, Advocate
... for appellant in ITA/133/2012.

Mr. Amit Sharma, Advocate
... for appellant in ITA/233/2007.

Mr. Tilak Mitra, Advocate
... for appellant in ITA/158/2010.

Mr. J.P. Khaitan, Sr. Advocate
Mr. Sanjay Bhowmik, Advocate
Ms. Swapna Das, Advocate
... for respondent.

1. Heard learned counsel for the appellant / Income Tax Department and learned senior counsel for the respondent/assessee at length.

2. Learned counsel for the appellant has referred to Section 4-A of U.P. Trade Tax Act, 1948 and the relevant notification No.780 dated 31.03.1995 issued thereunder to contend that tax exemption has been granted on turnover of sales. It is not a subsidy either for setting up of industry or on capital goods. Therefore, the assessing officer has lawfully and correctly held that the exemption from tax on sales availed by the assessee and collecting the tax on exempted sales and keeping the same with it, can, by no stretch of imagination, be said to be a subsidy. Section 4-A of U.P. Trade Tax Act, 1948 provides for conditional exemption from tax on sales. Exemption itself presupposes liability to tax. Subsidy is in the nature of assistance. Therefore, exemption or partial exemption from tax under Section 4-A read with the notification in question is not a subsidy at all and in no case a subsidy on capital goods.
3. Sri J.P. Khaitan, learned senior counsel for the respondent/assessee prays for some time to give a fresh look to the controversy.
4. As prayed by learned senior counsel for the respondent, list on 18.12.2023 [at 10:30 a.m.] along with ITA/233/2007 and ITA/158/2010 for further hearing.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)